

CENTER FOR DISABILITY ACCESS  
Amanda Seabock, Esq., SBN 289900  
Prathima Price, Esq., SBN 321378  
Dennis Price, Esq., SBN 279082  
Mail: 8033 Linda Vista Road, Suite 200  
San Diego, CA 92111  
(858) 375-7385; (888) 422-5191 fax  
[amandas@potterhandy.com](mailto:amandas@potterhandy.com)

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker**

Plaintiff,

v.

**Donald Sweet**, in individual and  
representative capacity as trustee of  
The Donald Sweet and Sara Sweet  
Revocable Trust;  
**Sara Sweet**, in individual and  
representative capacity as trustee of  
The Donald Sweet and Sara Sweet  
Revocable Trust;  
**David K.C Corporation**, a  
California Corporation

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Donald Sweet, in individual and representative capacity as trustee of The Donald Sweet and Sara Sweet Revocable Trust; Sara Sweet, in individual and representative capacity as trustee of The Donald Sweet and Sara Sweet Revocable Trust; David K.C Corporation, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is

1 substantially limited in his ability to walk. He suffers from a C-4 spinal cord  
2 injury. He is a quadriplegic. He uses a wheelchair for mobility.

3 2. Defendants Donald Sweet and Sara Sweet, in individual and  
4 representative capacity as trustee of The Donald Sweet and Sara Sweet  
5 Revocable Trust, owned the real property located at or about 2731 Taylor St,  
6 San Francisco, California, in October 2020.

7 3. Defendants Donald Sweet and Sara Sweet, in individual and  
8 representative capacity as trustee of The Donald Sweet and Sara Sweet  
9 Revocable Trust, own the real property located at or about 2731 Taylor St, San  
10 Francisco, California, currently.

11 4. Defendant David K.C Corporation owned Darren's Café located at or  
12 about 2731 Taylor St, San Francisco, California, in October 2020.

13 5. Defendant David K.C Corporation owns Darren's Café ("Restaurant")  
14 located at or about 2731 Taylor St, San Francisco, California, currently.

15 6. Plaintiff does not know the true names of Defendants, their business  
16 capacities, their ownership connection to the property and business, or their  
17 relative responsibilities in causing the access violations herein complained of,  
18 and alleges a joint venture and common enterprise by all such Defendants.  
19 Plaintiff is informed and believes that each of the Defendants herein is  
20 responsible in some capacity for the events herein alleged, or is a necessary  
21 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
22 the true names, capacities, connections, and responsibilities of the Defendants  
23 are ascertained.

24  
25 **JURISDICTION & VENUE:**

26 7. The Court has subject matter jurisdiction over the action pursuant to 28  
27 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 8. Pursuant to supplemental jurisdiction, an attendant and related cause  
2 of action, arising from the same nucleus of operative facts and arising out of  
3 the same transactions, is also brought under California's Unruh Civil Rights  
4 Act, which act expressly incorporates the Americans with Disabilities Act.

5 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
6 founded on the fact that the real property which is the subject of this action is  
7 located in this district and that Plaintiff's cause of action arose in this district.

8  
9 **FACTUAL ALLEGATIONS:**

10 10. Plaintiff went to the Restaurant in October 2020 with the intention to  
11 avail himself of its goods and to assess the business for compliance with the  
12 disability access laws.

13 11. The Restaurant is a facility open to the public, a place of public  
14 accommodation, and a business establishment.

15 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
16 to provide wheelchair accessible dining surfaces in conformance with the ADA  
17 Standards as it relates to wheelchair users like the plaintiff.

18 13. The Restaurant provides dining surfaces to its customers but fails to  
19 provide any wheelchair accessible dining surfaces.

20 14. One problem that plaintiff encountered is the lack of sufficient toe  
21 clearance and width under the dining surfaces for wheelchair users.

22 15. Plaintiff believes that there are other features of the dining surfaces that  
23 likely fail to comply with the ADA Standards and seeks to have fully compliant  
24 dining surfaces for wheelchair users.

25 16. On information and belief, the defendants currently fail to provide  
26 wheelchair accessible dining surfaces.

27 17. These barriers relate to and impact the plaintiff's disability. Plaintiff  
28 personally encountered these barriers.

1 18. As a wheelchair user, the plaintiff benefits from and is entitled to use  
2 wheelchair accessible facilities. By failing to provide accessible facilities, the  
3 defendants denied the plaintiff full and equal access.

4 19. The failure to provide accessible facilities created difficulty and  
5 discomfort for the Plaintiff.

6 20. Even though the plaintiff did not confront the following barriers, the  
7 path of travel leading to the restroom is too narrow. Additionally, the restroom  
8 sink and coat hook are too high. Plaintiff seeks to have these barriers removed  
9 as they relate to and impact his disability.

10 21. The defendants have failed to maintain in working and useable  
11 conditions those features required to provide ready access to persons with  
12 disabilities.

13 22. The barriers identified above are easily removed without much  
14 difficulty or expense. They are the types of barriers identified by the  
15 Department of Justice as presumably readily achievable to remove and, in fact,  
16 these barriers are readily achievable to remove. Moreover, there are numerous  
17 alternative accommodations that could be made to provide a greater level of  
18 access if complete removal were not achievable.

19 23. Plaintiff will return to the Restaurant to avail himself of its goods and to  
20 determine compliance with the disability access laws once it is represented to  
21 him that the Restaurant and its facilities are accessible. Plaintiff is currently  
22 deterred from doing so because of his knowledge of the existing barriers and  
23 his uncertainty about the existence of yet other barriers on the site. If the  
24 barriers are not removed, the plaintiff will face unlawful and discriminatory  
25 barriers again.

26 24. Given the obvious and blatant nature of the barriers and violations  
27 alleged herein, the plaintiff alleges, on information and belief, that there are  
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this  
 2 lawsuit, once he conducts a site inspection. However, please be on notice that  
 3 the plaintiff seeks to have all barriers related to his disability remedied. See  
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 5 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 6 disability removed regardless of whether he personally encountered them).

7  
 8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 12 again herein, the allegations contained in all prior paragraphs of this  
 13 complaint.

14 26. Under the ADA, it is an act of discrimination to fail to ensure that the  
 15 privileges, advantages, accommodations, facilities, goods and services of any  
 16 place of public accommodation is offered on a full and equal basis by anyone  
 17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 18 § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,  
 20 or procedures, when such modifications are necessary to afford  
 21 goods, services, facilities, privileges, advantages, or  
 22 accommodations to individuals with disabilities, unless the  
 23 accommodation would work a fundamental alteration of those  
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is  
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 27 defined by reference to the ADA Standards.
- 28 c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are  
2 readily accessible to and usable by individuals with disabilities,  
3 including individuals who use wheelchairs or to ensure that, to the  
4 maximum extent feasible, the path of travel to the altered area and  
5 the bathrooms, telephones, and drinking fountains serving the  
6 altered area, are readily accessible to and usable by individuals  
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 27. When a business provides facilities such as dining surfaces, it must  
9 provide accessible dining surfaces.

10 28. Here, accessible dining surfaces have not been provided in  
11 conformance with the ADA Standards.

12 29. When a business provides paths of travel, it must provide accessible  
13 paths of travel.

14 30. Here, accessible paths of travel have not been provided in conformance  
15 with the ADA Standards.

16 31. When a business provides facilities such as restrooms, it must provide  
17 accessible restrooms.

18 32. Here, accessible restrooms have not been provided in conformance with  
19 the ADA Standards.

20 33. The Safe Harbor provisions of the 2010 Standards are not applicable  
21 here because the conditions challenged in this lawsuit do not comply with the  
22 1991 Standards.

23 34. A public accommodation must maintain in operable working condition  
24 those features of its facilities and equipment that are required to be readily  
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 35. Here, the failure to ensure that the accessible facilities were available  
27 and ready to be used by the plaintiff is a violation of the law.  
28

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

37. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

38. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

39. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

1        2. Damages under the Unruh Civil Rights Act, which provides for actual  
2 damages and a statutory minimum of \$4,000 for each offense.

3        3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5  
6 Dated: October 28, 2020

CENTER FOR DISABILITY ACCESS

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8 By:



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11 Amanda Seabock, Esq.  
12 Attorney for plaintiff  
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